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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,	)	Case No. CR 18-577 CRB
	)	
Plaintiff,	)	UNITED STATES' REPLY IN SUPPORT OF ITS
	)	MOTION <i>IN LIMINE</i> NO. 1: TO ADMIT
v.	)	EVIDENCE OF AUTONOMY SYSTEMS
	)	LIMITED'S RESTATEMENT AND RELATED
MICHAEL RICHARD LYNCH AND	)	SUMMARY CHARTS
STEPHEN KEITH CHAMBERLAIN,	)	
	)	Pretrial Conference: February 21, 2024, 2 p.m.
Defendants.	)	Trial Date: March 18, 2024
	)	

**INTRODUCTION**

In its efforts to resist the Ninth Circuit's affirmance of the admission of the Restatement, the defense ignores critical facts – the Restatement was *required* by law and *required* to conform to accounting standards. It also dramatically overstates facts, trying to equate coordination by ASL accountants and outside lawyers working in parallel with untoward collusion. And it all but ignores Ninth Circuit law: *SEC v. Jasper*, 678 F.3d 1116 (9th Cir. 2012) (holding restatement was not excludable hearsay under the business-record exception). *See* ECF No. 308 at iii to iv (omitting *Jasper* from Table of Authorities) & 2 (single citation to "*Jasper*").

1 The Restatement here, in the end, is a financial statement – required by law, shaped by  
 2 accounting standards, and prepared in the course of ASL’s business. No one questions the transactions  
 3 in ASL’s financial statements flow through to Autonomy Corporation plc. The Restatement, like any  
 4 financial statement, is a quintessential business record. Its signatory (Yelland) should be permitted to  
 5 sponsor it, and he and its preparers (e.g., Yelland and Anderson) should be permitted to explain the real-  
 6 time decisions they made. Whether those decisions were unduly influenced by HP’s litigation strategy  
 7 or outsiders are appropriate matters for cross-examination, not a basis for exclusion. And the summary  
 8 charts proffered by the government – which explain the impact of the Restatement’s component parts on  
 9 Autonomy Corporation plc’s financial statements – should be admitted.

### 10 **REPLY**

11 The government incorporates its prior filings touching on the Restatement, including its  
 12 Opposition to Defendant Michael Richard Lynch’s Motion *in Limine* No. 2: To Exclude the 2014 Filing  
 13 of Autonomy Systems Ltd.’s 2011 Annual Report. *See* ECF No. 312. The government responds briefly  
 14 to the following points.

15 First, the defense’s suggestion that *Jasper* applies only to a limited category of restatements  
 16 reflects a deeply constrained view of that case. No one in *Jasper* seriously questioned that financial  
 17 statements were prototypical business records. The question was whether *restated* financial statements –  
 18 which necessarily disagreed with prior financial statements – were likewise within the hearsay  
 19 exception. The defense’s efforts to draw yet further distinctions are not supported by the case – or the  
 20 Ninth Circuit’s affirmance in *Hussain*.

21 Second, the defense contests the “regularity” element of the hearsay exception. *See* ECF No.  
 22 308 at 2. But the right question is whether it was the regular practice of ASL to prepare financial  
 23 statements – not how regularly it restated its financial statements. Few if any companies regularly  
 24 restate their financial statements, and if that were a disqualifying factor, *Jasper* would have come out the  
 25 other way.

26 Third, the defense claims the Restatement is not trustworthy and is not a financial statement filed  
 27 by Yelland as required by law consistent with accounting standards, but a statement of HP attorneys and  
 28

forensic experts. *See, e.g.*, ECF No. 308 at 1 (belittling the filing made under UK law as “a litigant’s accusation”). Not only does this go to the weight of the evidence, it is wrong.

The evidence cited by the defense to support the claim that Yelland and Anderson abandoned all independence and free will is belied by its limited citations. For example, the defense cites a May 20, 2013 email from a PwC representative to Anderson regarding a reseller/counterparty Filetek. ECF No. 293-8. But the email consists largely of a recitation of “documentary evidence” uncovered in HP’s internal investigation – and there is no indication Anderson relied exclusively or primarily on hearsay from lawyers included in the email. More fundamentally, Anderson’s own work product states:

- “HP legal have engaged external counsel Morgan Lewis, and forensic accountants PwC to investigate a number of transactions from the pre-acquisition period. *The current Autonomy team have also conducted investigations.*” ECF No. 293-9 at 6 (emphasis added).
- “Around the same time, HP’s legal counsel, Morgan Lewis, engaged PWC to review a sample of revenue contracts from the preacquisition period of 2009 and 2011. *The finance team’s review* has resulted in identification of significant adjustments all of which have been treated as correction of error.” ECF No. 293-9 at 7 (emphasis added).
- “Work done . . . extensive revenue review has been carried out . . . . Following this review and resulting adjustments, *the finance team* consider that revenue is reasonably stated.” ECF No. 29309 at 10-11 (emphasis added).

The government respectfully submits this reflects good-faith efforts by ASL not to ignore documentary evidence gleaned from parallel or prior internal investigations, not to unthinkingly concede or turn a blind eye to them. Notably, the restatement in *Jasper* followed an internal investigation by lawyers – that did not detract from the accountants’ need to file accurate financial statements. To the extent the defense disagrees, the remedy is cross-examination, not exclusion.

Similarly, the defense’s repeated reference to *In re Homestore*, 2011 WL 291176 (C.D. Cal. Jan. 25, 2011), is completely misplaced. The government is not seeking to admit an internal investigation report or interview memoranda by HP counsel. Instead, it seeks to admit a financial statement and the preparer’s explanations of the entries in that financial statement.

Just as the Restatement is admissible, so is testimony by Yelland and Anderson about its components. While the defense complains this would be improper opinion testimony, for the reasons

1 the government has explained, it is, in fact, percipient witness testimony of individuals doing their jobs.  
 2 Even if it were considered opinion testimony, the government has given ample notice.

3 Finally, the defense objects to summary charts designed to illustrate for the jury the components  
 4 of the Restatement and their impact on Autonomy Corporation plc's financial statements. But its  
 5 arguments for why these are not appropriate Rule 1006 summaries miss the mark. Tellingly, nowhere  
 6 does the defense suggest the summaries somehow do not reflect that actual adjustments ASL made to its  
 7 financial statements or their equivalent impact on Autonomy Corporation plc's financial statements.  
 8 They seem to contest Yelland's actions, not the math. Likewise, their cherry-picked examples of  
 9 supporting documents do not reflect negatively on its reliability. For example, the 2014 settlement  
 10 agreement with PRISA is designed to highlight the end of the relationship (ECF No. 294-3), the August  
 11 2012 news article regarding Vatican is designed to show there was no hope of MicroTech really selling  
 12 software to the Holy See because a competitor had won (ECF No. 208-6), and the "anonymous memo  
 13 regarding MicroLink appears" consistent with Anderson's workpapers and thus *are* business records  
 14 (ECF No. 308-5). These matters are appropriate foundational questions for Yelland, not a basis for  
 15 exclusion. The summaries should be admitted because they fairly summarize the complex information  
 16 in the Restatement.

### 17 CONCLUSION

18 The Court should grant the government's motion *in limine* and admit the Restatement, testimony  
 19 by Yelland and Anderson about the Restatement, and the summary charts.

20 DATED: February 7, 2024

Respectfully submitted,

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 28 U.S.C. § 515

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